



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date Introduced	02/22/08	Bill No:	<a href="#">SB 1562</a>
Tax:	Property	Author:	Hollingsworth and Ducheny
Related Bills:	SB 148 (Hollingsworth) AB 1759 (Florez) SB 1064 (Hollingsworth)		

**BILL SUMMARY**

This bill:

- Allows a county board of supervisors to enact an ordinance permitting taxpayers engaged in certain farming activities that were significantly impacted by specified disasters to defer their next property tax installment payment for one year without interest or penalty.
- Restarts the four-year property tax exemption period for newly planted fruit and nut trees currently in their exemption phase that must be pruned back as a result of specified disasters.

**ANALYSIS**

**Disaster Relief – Property Tax Deferral**

*Revenue and Taxation Code Sections 199, 199.50, & 199.60*

**CURRENT LAW**

**Assessment Reductions.** Section 170 of the Revenue and Taxation Code provides property tax relief to taxpayers whose property was damaged or destroyed as a result of a misfortune or calamity if the damage is more than \$10,000. Disaster relief is provided by allowing the county assessor, under specified conditions, to reassess the property as of the date of the disaster. The assessor determines the market value of the property before and after the damage. The percentage of the loss is then applied to the current assessed value of the property. The reassessment ultimately results in a pro-rata reduction of current year taxes either by refunding taxes previously paid or issuing a corrected tax bill reflecting the reduced assessment. The property will retain the reduced value until it is restored, repaired, or reconstructed. Generally, the property owner must file a claim requesting the reassessment with the assessor within one year of the event.

**Property Tax Deferral.** Sections 194 and 194.1 provide that for those property owners that make a claim for reassessment under Section 170 additional disaster relief may be available in the form of a deferral of the next property tax installment payment. Deferment is only available if the damage occurs in an event for which the governor issues a proclamation of a state of emergency. Furthermore, deferral is only available to those that pay their taxes directly to the tax collector (i.e., property taxes are not paid through impound accounts).

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To qualify for a deferral on property receiving a homeowners' exemption, there must be "substantial disaster damage" which is defined as damage amounting to at least 10 percent of its fair market value or \$10,000, whichever is less. For all other property, the damage must be at least 20 percent of its market value immediately preceding the disaster causing the damage.

A claim requesting a deferral must be filed with the assessor before the next property tax installment payment date. The payment will be deferred without penalty or interest until after the assessor has reassessed the property and, as a result, the tax collector issues a corrected tax bill based on the reduced assessment. Deferred taxes are due 30 days after receiving the corrected bill.

**Installment Payments.** Property taxes for the fiscal year are payable in two equal installments. The first installment is due on November 1 and becomes delinquent on December 10 (Sections 2605 and 2617). The second installment is due on February 1 and becomes delinquent on April 10 (Sections 2606 and 2618). For the 2008-09 fiscal year, the first installment payment will become delinquent if not paid by December 10, 2008 and the second installment will become delinquent if not paid by April 10, 2009.

**State Assistance for Local Governments - Property Tax Backfill and Bridge Loans.** Legislation is typically enacted for most events for which the governor issues a proclamation of a state of emergency to fully reimburse local governments for property tax revenue loss associated with Section 170 reductions in assessment for the current fiscal year. With respect to deferrals, existing Sections 194.2 through 194.5 outline the process for counties to obtain a bridge loan from the state to cover the loss of revenue from taxpayers that request such deferrals.

#### PROPOSED LAW

**Property Tax Deferral – Farming Income Loss.** This bill would provide that in those counties affected by specified events occurring in 2007 for which the governor issued a proclamation of a state of emergency (freeze, wildfires and strong winds), the local board of supervisors may enact an ordinance to authorize a qualified taxpayer to defer payment of the first installment payment for the 2008-09 fiscal year taxes (i.e., the taxes that would become delinquent if not paid by December 10, 2008) until December 10, 2009.

Revenue and Taxation Code	Governor's Proclamation	Counties Affected	Year of Event	Year of Projected Income
Section 199	Freeze	18	2007	2007
Section 199.50	Wildfires	7	2007	2008
Section 199.60	Wind	1	2007	2008

A taxpayer must request property tax deferral on or before November 1, 2008, and must repay the amount postponed by December 10, 2009. No penalty or interest will be charged on the amount of property taxes deferred.

**Eligibility.** A "qualified taxpayer" means a person or entity that is engaged in specified industry codes of the North American Industry Classification System Manual published by the United States Office of Management and Budget (2002 edition) and that, due to the disaster, suffered a revenue loss of 60 percent or more of the projected income of

the person or entity for the relevant calendar year. For the freeze, the relevant calendar year is 2007, while for the fire and wind damage, it is 2008. The industry classifications include those for oil seed and grain farming, vegetable and melon farming, fruit and tree farming, greenhouse, nursery and floriculture production, and other crop farming. To verify that the income loss threshold is met, the application for deferral must include documentation, such as crop insurance data, shipping statements from packing houses, or copies of applications submitted to governmental entities documenting the disaster losses.

**Disaster Relief – Tree Pruning**  
*Revenue and Taxation Code Section 211*

**CURRENT LAW**

**Fruit and Nut Trees.** Fruit and nut bearing trees and grapevines are subject to property tax as “living improvements” but they are exempt from tax during a portion of their immature life. Article XIII, Section 3(i) of the California Constitution exempts from property tax fruit and nut trees planted in orchard form until four years after the season first planted. The land upon which the trees are planted remains subject to tax. A similar exemption exists for grapevines, except that the exemption period is for three years.

Revenue and Taxation Code Section 211 restates the exemption provisions of the constitution. It additionally provides that, if a tree currently exempt from tax as a “new planting” is so damaged as a result of freezes occurring in December 1990, December 1998, and January 2007 that it must be pruned to the trunk or bud union to establish a new shoot, the pruning of the tree will be considered a “new planting” which restarts the exemption period for that tree.

In addition to the exemption for newly planted orchards provided by Section 211, Property Tax Rule 131 provides that the four-year exemption period will also apply to individual trees when (1) a tree is newly planted within an existing orchard (i.e., a replacement tree) or (2) a tree that had reached commercial production requires grafting causing another non-producing period before it will bear fruit or nuts.

Once the exemption period expires and the trees are subject to tax, Section 53 provides the initial base year value of the trees for purposes of Proposition 13 will be the full cash value of the trees as of January 1 on the first year they are taxable.

**PROPOSED LAW**

**Fruit and Nut Trees.** This bill would amend Section 211 to restart the four-year exemption period for fruit and nut trees that, while they were still in their exemption period, were so severely damaged by wildfires and strong winds that they required pruning to the trunk or bud union to establish a new shoot.

<b>Revenue and Taxation Code</b>	<b>Governor's Proclamation</b>	<b>Counties Affected</b>	<b>Events Commencing</b>
Section 211(a)(4)	Wind	1	October 20, 2007
Section 211(a)(5)	Wildfires	7	October 21, 2007

**IN GENERAL**

**Disaster Relief.** There are a variety of provisions in property tax law to provide property tax relief for disaster victims. These provisions address both the short term and the long term consequences of the disaster as it relates to current and future property tax liabilities. In the short term, property tax liability is redetermined to reflect the damage to the property and for some the next property tax installment payment may be deferred. Over the long term, a property owner may rebuild or repair the damage to their property without incurring any increase in property tax liability. Alternatively, property owners may instead relocate rather than rebuild without being adversely impacted by the property tax consequences. The various provisions of law in the Revenue and Taxation Code are noted below.

**DISASTER RELIEF REFERENCE CHART**

<b>Section</b>	<b>Property Type</b>	<b>Type of Relief Available</b>	<b>Type of Disaster</b>
170	All property types	Reassessment	Any disaster or calamity
194 & 194.1	Real property and manufactured homes	Property tax deferral – next installment	Governor-proclaimed
195.1	Real property and manufactured homes	Property tax deferral – second consecutive installment	Governor-proclaimed
194.9	Real property and manufactured homes	Property tax deferral – supplemental assessment	Governor-proclaimed
69	All property types	Base year value transfer	Governor-proclaimed
69.3	Principal place of residence	Base year value transfer	Governor-proclaimed
69.5	Principal place of residence —over 55 or physically disabled	Base year value transfer	Any disaster or calamity
172 & 172.1	Manufactured home	Base year value transfer	Governor-proclaimed
70	Real property only	New construction exclusion	Any disaster or calamity
5825	Manufactured home	New construction exclusion; Base year value transfer	Any disaster or calamity

**Property Taxation of Non-Williamson Act Land.** Agricultural property is subject to the assessment rules of Proposition 13, in that it retains its base year value until new construction or a change in ownership takes place. Inflationary increases in assessment are limited to no more than two percent a year. Trees and vines are subject to property tax as “living improvements” and a base year value is established for them once the exemption period for new plantings ends. In addition to the typical costs of land preparation and planting, an investment in an orchard or vineyard is a long-term venture with a period of several years before any cash flow is realized. Both types of crops require several years to reach maturity, and the land is committed to that specific use with little flexibility to other uses. In recognition of this fact, the law exempts fruit and nut bearing trees and grapevines from taxation during a portion of their immature

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life. The taxation of the trees and vines is synchronized with their ability to produce a sellable crop. (The *land* on which the trees and vines are planted remains subject to taxation; it is only the *trees and vines* that are temporarily exempt.)

**Property Taxation: California Land Conservation Act (Williamson Act).** Under the Williamson Act, landowners may enter into contracts with participating cities and counties to restrict their lands to agricultural or open-space uses. The contract must be for a minimum term of 10 years, and are automatically renewed each year unless other action is taken. In exchange for entering into these contracts, the land and any living improvements (such as trees and vines) are valued according to their income earning ability. The valuation of land and improvements under these contracts is based on a statutory formula that capitalizes the income that the land is capable of producing from its agricultural use. The law also provides that each year, the property will be assessed at the lowest of the factored base year value, the Williamson Act value, or the current fair market value. In this way, landowners participating in the Williamson Act program are guaranteed that their land value will never be assessed at a greater value than noncontracted land.

### BACKGROUND

**Tree Pruning.** Similar special purpose legislation was enacted for three severe freezes occurring in December 1990, December 1998 and January 2007.

Freezes	Type	Bill Number
December 1990	Trees & Grapevines	AB 1771 (Harvey) Stats. 1991, Ch.1034
December 1998	Trees	SB 1014 (Poochigian) Stats. 1999, Ch. 291
January 2007	Trees	AB 297 (Maze) Stats. 2007, Ch. 225

AB 1771 was the first bill to starting a new exemption period for fruit or nut bearing trees or grapevines, damaged by the December 1990 freeze. AB 1771 was sponsored by the Kern County Assessor in an effort to provide relief to farmers who had vineyards and orchards still within the initial exemption period for newly planted vines and trees when the December 1990 freeze hit. SB 1014 was sponsored by the California Citrus Mutual. Grapevines were not included in this bill because they were not damaged by the 1998 freeze. AB 297 was sponsored by the author and similarly did not include grapevines.

**Property Tax Backfill.** AB 62 (Nava, Chap. 224, Stats. 2007) was enacted last year to provide property tax backfill to local governments for property tax revenue losses associated with any assessment reductions granted to affected property owners in association with the freeze of 2007 pursuant to Section 170.

### COMMENTS

1. **Sponsor and Purpose.** The authors are sponsoring this measure to provide local counties the option of providing additional property tax relief to property owners that lost a significant portion of their projected income due to various disasters occurring in 2007 via postponement of half of their property taxes for one year without interest or penalty. This bill would also restart the exemption period for young trees damaged by specified wildfires and windstorms occurring in 2007.

2. **Proclamations.** Related to this bill, the governor has issued six proclamations of a state of emergency for various counties as noted below:

**Freeze.** In January 2007, four proclamations for a total of 18 counties related to the severe freezing weather were issued as follows:

Date	County
January 16, 2007	Fresno, Kern, Kings, Madera, Merced, Monterey, San Luis Obispo, Santa Barbara*, Tulare, and Ventura*
January 19, 2007	Imperial, San Bernardino*, San Diego*, Santa Clara, Riverside**, and Yuba
January 20, 2007	Stanislaus
January 26, 2007	El Dorado

**Wildfires.** In October 2007, a proclamation was issued for more than 11 major wildfires burning in seven counties in Southern California at that time. Eventually there were a total of 23 fires that burned between October 20 and November 9, 2007.

Date	County
October 21, 2007	Los Angeles, Orange, Riverside**, San Bernardino*, San Diego*, Santa Barbara*, and Ventura*

**Winds.** On November 2, 2007, a proclamation was issued for extremely high winds and resulting damage that began about October 20, 2007.

Date	County
November 2, 2007	Riverside**

\* Affected by the freeze and fire.

\*\*Affected by the freeze, fire and wind.

3. **Farming property: taxable and nontaxable property.** Any property subject to property tax that is damaged or destroyed in an event for which the governor issues a proclamation of a state of emergency is eligible for both property tax reassessment and property tax deferral if it otherwise meets the qualifications specified in law. Property used in farming that is subject to the property tax includes items such as living improvements (trees and grapevines), stakes and trellises, irrigation systems, pumps, fences, farm equipment, and farm structures. However, crop losses associated with these events do not qualify for property tax reassessment or property tax deferral because the crops are not taxed in the first place. Article XIII, Section 3(h) of the California Constitution expressly exempts growing crops from property taxation. This bill proposes to provide tax relief by deferring property taxes since the general types of property tax relief offered after a major event is not effective or applicable to crop losses.
4. **This bill would set a precedent for providing property tax deferral based on income loss resulting from crop damage or loss.** This bill applies to persons in the following industry classifications: oil seed and grain farming, vegetable and melon farming, fruit and tree farming, greenhouse, nursery and floriculture production, and other crop farming. The types of crops damaged in the freeze, wildfires, and wind storms include citrus fruit, fruit, nuts, grapes, avocados, artichokes, row crops (lettuce and strawberries etc.), cut flowers, and ornamental nursery plants.

5. **Does “projected income” relate only to crop income?** To be eligible for deferral, the standard of measure would be a “revenue loss of 60 percent or more of the projected income of the person or entity” for the calendar year. If a person or entity suffered a total loss of income from crops, but had income from other sources, such as a full time job in addition to farming, would that person or entity be ineligible for property tax deferral if the crop income loss was less than 60% of their total income?
6. **Property tax payments with deferral.** This bill would allow an eligible taxpayer to postpone one-half of the property tax liability for the 2008-09 fiscal year. The half that would otherwise be due by December 10, 2008 would not be payable until December 10, 2009, the same day that taxes for the first installment of the next fiscal year (2009-10) will be due. The second installment payment for the 2008-09 fiscal year would still be due by April 10, 2009.
7. **Where are applications for deferral to be filed?** Related to a request to defer property taxes, the bill does not expressly state to what county department applications are to be made. Presumably, the applications will be filed with the county assessor. Section 194.1, a similar provision that provides property tax deferral generally, specifies that the application is to be made to the county assessor. Once approved, the county assessor in turn notifies the county auditor and county tax collector for appropriate action.
8. **Should the September fire in San Bernardino County be included?** On September 15, 2007, a proclamation was issued for San Bernardino County for the Butler Two Fire that started on September 14, 2007 which is not included in proposed Section 199.50 of this bill.
9. **With respect to the tree pruning provisions, to avoid the need to introduce legislation for each specific disaster in the future, should general purpose provisions be considered instead?** The tree pruning provisions apply to a narrow class of trees – those currently in their exemption period. Existing law already restarts the exemption period for trees that must be pulled and replaced and for those that are grafted and no longer can produce a crop. Given the narrow scope of these provisions in practical application it may be preferable to make these provisions automatic whenever the governor issues a proclamation of a state of emergency for a county where the disaster affects trees or grapevines.
10. **Should grapevines be included?** The pruning provisions do not apply to any grapevines that may have been in their exempt phase.
11. **Related Legislation.** Property tax backfill legislation for assessment reductions under Section 170 for the wildfires and wind storms is pending this year in AB 1759 (Florez) and SB 1064 (Hollingsworth). Last year, SB 148 (Hollingsworth) proposed property tax deferral provisions similar to this bill, but only for the freeze.

## COST ESTIMATE

With respect to administration, the Board would incur insignificant costs in informing and advising local county assessors, the public, and staff of the law changes. These costs are estimated to be under \$10,000.

**REVENUE ESTIMATE**

**Tree Pruning.** Based on a survey of County Assessors' offices in the seven disaster counties affected by the wildfires and winds the amount of damaged or destroyed fruit and nut trees is minimal. Most counties reported no tree damage or tree loss, with one county estimating tree damages to be between \$300,000 and \$1 million in assessed value. Therefore, with respect to the tree pruning provisions of this bill, the revenue impact at the basic one percent property tax rate is (\$300,000 to \$1,000,000) x 1%, or between \$3,000 and \$10,000.

**Property Tax Deferral.** This bill merely postpones payment of taxes, without interest or penalty. These taxes will ultimately be collected. The state will neither be reimbursing local governments nor providing a bridge loan to any county that chooses to adopt the temporary ordinance to provide disaster assistance to persons impacted by these disasters. It is the county's option to offer deferral and in those counties, if any, the taxpayer's subsequent option to participate by making an application.

**REVENUE SUMMARY**

The tree pruning provisions of this bill would result in a revenue loss to counties in the affected disaster areas of between \$3,000 and \$10,000 annually for the length of the exemption period.

While there may be a small initial revenue loss in those counties that enact an ordinance for any qualified taxpayer that makes a claim for property tax deferment, the loss will be temporary and we estimate tax to be paid in full upon the specified due date.

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